

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 839 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE K.J.VAIDYA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? no
2. To be referred to the Reporter or not? no

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3. Whether Their Lordships wish to see the fair copy of the judgement? no
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? no
5. Whether it is to be circulated to the Civil Judge? no

RAMESHCHANDRA BHAIKAVPRASAD JAIN

Versus

STATE OF GUJARAT

Appearance:

MR DF AMIN for Petitioners
Mr.SA.PANDY,PP for the State.

MR SV RAJU for Respondent No. 2

CORAM : MR.JUSTICE K.J.VAIDYA

Date of decision: 06/09/96

ORAL JUDGMENT :

Rameshchandra Bhairavprasad Jain and one another
by this Misc.Criminal Application under section 482 of

the Code of Criminal Procedure, 1973, have moved this court, inter alia praying for quashing and setting aside the proceedings initiated pursuant to the complaint filed by the opponent no.2 - Mahenrasinh Chhatrasing Rajput for the alleged offences punishable under sections 406 and 423 of the IPC, which came to be registered as Criminal Case No., 197/88 by the learned Metropolitan Magistrate Court No.16, Ahmedabad.

2. This matter was called out thrice before recess and was adjourned after recess. After recess when the matter was called out, the learned advocate for the petitioner was absent. Heard Mr. S.A.Pandya, the learned APP in absence of the learned advocate for the petitioner. Perused the Misc.Criminal Application well and the complaint filed by the opponent no.1. The offence is of the year 1988. Having regard to the facts and circumstances of this case, without prejudice to the contentions of the petitioner, the petitioner is directed to appear before the learned Magistrate on or before 30th September 1996, where it will be open to him to plead and show cause that the facts alleged in the complaint do not prima-facie disclose any offence and accordingly, the proceedings instituted and process issued against him being ex-facie illegal, the same be quashed and set aside dropping the criminal proceedings instituted against him. For this purpose, it is indeed not necessary that the petitioner accused should personally remain present before the learned Magistrate as it will be open to him to make submissions through his learned advocate. As held by the Supreme Court in the case of K.N.MATHEW VS. STATE OF KERALA, AIR, 1992, SC 2206, we also make it clear that the order issuing process is an interim order and not a judgment. It can be varied or recalled. The fact that the process has already been issued is no bar to drop the proceedings if the complaint on the very face of it does not disclose any offence against the accused and in this regard if he so satisfies the learned Magistrate. With a view to avoid any undue hardship to the accused, the trial court, in the first instance, shall issue a fresh summons to the petitioner-accused requiring him to appear either in person or through his advocate. The trial court accordingly shall issue summons to the petitioner-accused within 7 days from the date of receipt of this judgment.

3. In the result, this application fails and is dismissed. The trial court is directed to issue a fresh summons to the petitioner-accused as stated above.

Having regard to the fact that the case is of the year 1988, the trial court shall dispose of the same at the earliest bearing in mind the directions and guidelines given by this court in the case of STATE OF GUJARAT VS C.K.PATEL, reported in 1991 (2) GLH 354 = 1991 (2) GLR 995.

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